

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

NELSON GALVANIZING, INC., NELSON
FOUNDRY, INC. and JOHN SWENNEY,

Defendants.

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COMPLAINT

INDEX No.

Plaintiff, by its attorney, VICTOR A. KOVNER, Corporation Counsel of the City of New York, states the following by way of complaint against defendants:

PRELIMINARY STATEMENT

1. Plaintiff the City of New York ("the City") brings this action seeking (1) injunctive relief directing defendants to abate the hazardous conditions created by the presence and substantial threatened release of hazardous substances on their property and (2) civil penalties for defendants' violation of an Order issued by the Commissioner of the Department of Environmental Protection ("DEP"), pursuant to the New York City Hazardous Substances Emergency Response Law ("HSERL") directing them to undertake and complete specified cleanup measures at the site.

2. Upon information and belief, from at least 1965 to the present defendants have occupied premises located at 11-02 Broadway, Long Island City, New York. During their occupancy, defendants



have disposed of chemical wastes on their property which contain hazardous substances. *delete?*

3. On August 19, 1988, following an inspection of defendants' property by DEP, the Commissioner of DEP determined that conditions at the site presented an immediate and substantial danger to the public health, welfare and environment. Consequently, the Commissioner issued an Order directing defendants to undertake specific measures to abate the hazardous conditions on their property. Despite having requested, and been granted, four extensions of the deadlines for compliance set forth in the Commissioner's Order, defendants have still failed to comply fully with the terms of the Order. Among other things, defendants have failed to remove 291 drums of chemical wastes from their premises, at least 149 of which are known to be hazardous. The drums of hazardous waste are improperly stored, are in an unstable condition and pose a hazard to the public health, welfare and the environment. Defendants have also failed to complete the installation of spill control measures at the site.

as determined by what?

4. It is apparent that defendants will not abate the public nuisance on their premises or comply with the terms of the Commissioner's Order in an expeditious manner absent an order from this Court.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to HSERL §24-610.

6. Venue lies in this Court pursuant to section 503 of the New York Civil Practice Law and Rules.

PARTIES

7. Plaintiff, the City of New York ("the City"), is a municipal corporation organized and existing under and by virtue of the laws of the State of New York.

8. Defendant Nelson Galvanizing, Inc. ("Nelson Galvanizing"), is a corporation operating a zinc galvanizing plant located at 11-02 Broadway, Long Island City, New York ("the Nelson Galvanizing facility").

9. Defendant Nelson Foundry, Inc. is the owner of record of the property located at 11-02 Broadway, Long Island City, New York.

10. Upon information and belief, defendant John Sweeney is a major shareholder and/or officer of Nelson Galvanizing who controls or has the capacity to control the day-to-day operations of Nelson Galvanizing and its employees.

FACTS

I. The Nelson Galvanizing Facility -- Description of the Site

11. The Nelson Galvanizing facility is a deteriorating, one-story ~~metal~~ structure where defendants are engaged in the business of zinc galvanizing, which is the coating of metal parts with zinc (to prevent their corrosion.)

12. The zinc galvanizing process involves cleaning iron and steel metal parts in baths of acids and caustics, pretreating them in zinc ammonium chloride and, finally, immersing them in molten zinc.

✓
13. The Nelson Galvanizing facility contains five process tanks, each with a capacity of 3,000 gallons. Two tanks contain strongly acidic solutions of sulfuric acid, one tank contains a solution of hydrofluoric acid (which defendants replaced in 1989 with another solution of sulfuric acid), one tank contains a solution of sodium hydroxide and one tank contains zinc ammonium chloride. The facility also has one tank of hot molten zinc for use in the final major step in the galvanizing process.

⇒ 14. The Nelson Galvanizing facility also contains drums of chemicals, including highly concentrated solutions of sulfuric acid, hydrofluoric acid and sodium hydroxide, zinc ammonium chloride, zinc oxide and solid zinc pieces; drums of liquid, sludge and solid wastes generated at the site; and one 3000-gallon storage tank of concentrated sulfuric acid. (which defendants transferred into plastic drums in 1988)

15. Until August 1988, when the City prohibited Nelson Galvanizing from discharging its process wastes into the public sewers, defendants maintained a neutralization pit where spent baths of sulfuric acid, hydrofluoric acid and sodium hydroxide were treated prior to their release into the public sewers.

II. DEP's Investigation of the Site

16. On August 17, 1988, DEP began an investigation of the Nelson Galvanizing facility in response to a complaint by Con Edison that acid in the ground had infiltrated one of its manholes located near the facility.

17. DEP's inspection revealed that all five process tanks inside the facility were cracked and leaking. The deteriorating

3000-gallon storage tank of sulfuric acid was also leaking, as was a discontinued tank of acid that defendants had improperly stored outside the facility near a collapsed sidewalk. There were no dikes, protective pads of other spill control devices under or around the leaking tanks.

18. The drums of waste and chemicals in the facility were improperly stored, mislabelled and many were open. Scrap metal parts were scattered throughout, obstructing the passageways. The roof was leaking in several places and the gates were rusting.

19. Pools of chemical sludges from leaks and spills had formed around each of the process tanks and the sulfuric acid storage tank. *A trench had been dug* Defendants had dug a trench into the floor along the wall near the process tanks in which chemical sludges and solids had accumulated from spills, leaks and dumping (hereinafter, the "sludge trench").

20. Spills and leaks of sulfuric acid, hydrofluoric acid and sodium hydroxide had eroded most of the facility's asphalt floor, exposing the dirt beneath, and had caused the building's foundation to corrode. The corrosive wastes in the sludge trench had caused the sidewalk adjacent to it to collapse. Chemicals were leaching through the exposed floor of the facility and through the trench, causing contamination of the underlying soil and groundwater.

21. The neutralization pit was ineffective in neutralizing the facility's process wastes.

22. The public sewer had collapsed where it connected to the facility's pipes and had corroded upstream and downstream of that

of what/
sewer flow?

Refused
ID order
as an out-
of-service
process
tank (w/)
containing
waste
sludges
No indication
of leakage of
acid

Spill
concrete
Acid
sewer

point due to defendants' continued discharge of large quantities of corrosive liquid wastes.

III. The August 19, 1988 Order

23. Based on DEP's inspection of the Nelson Galvanizing facility, the Commissioner of DEP determined that the release and threatened release of hazardous substances into the environment at the facility was causing immediate and substantial danger to the public health, welfare and the environment. Accordingly, on August 19, 1989, the Commissioner issued an Order ("the August 1988 Order" or "the Order") pursuant to section 24-610 of HSERL directing defendants to undertake cleanup measures at the site.

24. Specifically, the Order directed that defendants: (1) remove all wastes from the sludge trench by August 22, 1988; (2) discontinue the use of the undiked, leaking 3000-gallon sulfuric acid storage tank and containerize it by August 25, 1988; (3) discontinue the use of all five leaking process tanks and containerize them by August 29, 1988; and (4) identify and containerize all drummed chemical raw materials, process liquids and by-products, remove all chemical sludges and solids from around the process tanks and provide proper storage for the discontinued tank containing waste sludges outside the facility by August 22, 1988.

25. The Order also required defendants to develop a work plan to determine the nature and extent of the soil contamination in and around the facility and to submit it to DEP by September 17, 1988.

IV. The November 21, 1988 Letter

26. Site inspections conducted by DEP in August and early September revealed that defendants would not comply with all the terms of the August 1988 Order within the specified deadlines. Consequently, DEP issued a letter dated November 21, 1988 setting forth a revised timetable by which defendants were to complete the most urgent measures required by the Order ("the November 1988 letter").

27. The November 1988 letter directed defendants to install new process tanks with associated spill control measures and to remove all containerized hazardous waste liquids and sludges from the facility by December 16, 1988. DEP informed defendants that the remaining, secondary measures specified in the August 1988 Order would have to be completed at a later date and that DEP would provide a written timetable for completion of the remaining measures.

V. The March 1989 Letters

28. By February 1989, two months after the deadline specified in the November 1988 letter had passed, defendants had failed to complete the installation of the new process vats and had failed to implement the associated spill control measures.

29. By letter dated March 1, 1989 ("the March 1, 1989 letter"), DEP set forth a timetable for the completion of the remaining, secondary measures contained in the August 1988 Order.

30. Specifically, the March 1, 1989 letter directed defendants to (1) remove and containerize all solid materials and sludges from the old sulfuric acid and hydrochloric acid process tanks

by March 17, 1989; (2) dismantle and dispose of the concrete tanks containing these acids by March 31, 1989; (3) containerize the solids and sludges generated from the excavation of those tanks by March 31, 1989; (4) complete the installation of all the tanks by May 8, 1989; (5) sample, characterize and dispose of all containerized liquid wastes and solids generated from the clean-out of the old process tanks and from their excavations; and (6) sample and analyze the sludge in the trench, the groundwater and the surface and subsurface soil in the trench by March 24, 1989.

31. Approximately two weeks later, defendants stated they would not be able to complete any of the work within the time specified, with the exception of the removal and containerization of solid and sludge wastes from the old sulfuric and hydrofluoric acid tanks.

32. Accordingly, by letter dated March 24, 1989 ("the March 24, 1989 letter"), DEP extended each of the deadlines set forth in the March 1, 1989 letter by two weeks, with the exception of the deadline for the work defendants stated they would be able to complete.

33. Defendants failed to meet the deadlines set forth in the March 24, 1989 letter. Defendant Sweeney refused to discuss a new compliance schedule and refused to meet with DEP.

34. On June 21, 1989, the City sent defendants a final written notice informing them that they had still failed to comply with the terms of the August 1988 Order as extended by DEP's subsequent letters. The notice stated that they had failed to dismantle and

dispose of the old concrete tanks of sulfuric and hydrofluoric acid, containerize the solids and sludges generated from the excavations of these tanks, complete the installation of the new process tanks, sample, characterize and dispose of all containerized waste process liquids, or complete surface and subsurface sampling of the sludge trench. The notice further stated that the City would commence legal proceedings if defendants did not contact DEP to discuss another amended compliance schedule.

V. The July 11, 1989 Letter

35. Defendants finally contacted the City in July and agreed to abide by the terms of a new revised schedule, which was confirmed in a letter sent by the City to defendants dated July 11, 1989 ("the July 1989 letter").

36. The July 1989 letter directed defendants to containerize all solids and sludges generated from the excavation of the sulfuric acid and hydrofluoric acid tanks, to containerize and remove from the premises all contaminated soil generated from those excavations by October 10, 1989, to install the remaining concrete pads beneath two new tanks by October 10, 1989, to remove half the drums containing waste process liquids from the premises by August 10, 1989 and to remove the remaining drums by September 11, 1989.

37. Defendants failed to meet the deadlines specified in the July 1989 letter. Since July 1989, defendants have made no progress in complying with the Order and have refused to take any further corrective action, despite DEP's repeated requests that they do so.

VI. Present Conditions at the Nelson Galvanizing Facility

38. By their failure to comply with the clean-up measures specified in the Commissioner's Order, defendants have created conditions at the Nelson Galvanizing facility which pose a hazard to public health, welfare and the environment.

39. The Nelson Galvanizing facility presently contains ninety drums of contaminated solids and sludges generated from the excavation of leaking process tanks and the sludge trench, fifty-five drums of acid wastes, four drums of caustic wastes, fifty-six full and fifty-two quarter full drums of ferrous sulfate, seven drums of zinc ammonium chloride and twenty-seven drums of unidentified liquids.

40. The leaking, deteriorating zinc ammonium chloride process tank has not been repaired, nor has its use by defendants been discontinued.

41. Although individual drums vary in their contents and the process tank solutions vary in concentration from day to day, they all generally contain substances that are extremely deleterious to human health and the environment.

42. The drums of solids and sludges contain dangerously high levels of sulfuric acid, hydrofluoric acid, sodium hydroxide, lead, chromium and arsenic. The pH of these drums ranges from below 1 to above 12. The pH of a substance is the measure of its acidity or alkalinity on a scale of 0 to 14, in which 7 is neutral, 3 and below is strongly acidic and 11 and above is strongly basic. All strong acids and strong basics are highly corrosive and can burn skin upon contact.

hydrofluoric acid
43. The drums of acids contain elevated concentrations of sulfuric acid, chromium, lead and some arsenic and generally have a pH below 3.

44. The drums of caustic waste contain high concentrations of sodium hydroxide, chromium, lead and some arsenic and have a pH of approximately 12.

Five process tanks contain sulfuric acid (three), sodium hydroxide, and zinc ammonium chloride. High concentrations of lead, chromium and arsenic in all five tanks.
45. All five process tanks contain sulfuric acid, sodium hydroxide, lead, chromium and some arsenic. The pH of the three tanks of sulfuric acid varies around 3, and the pH of the sodium hydroxide tank is approximately 13. *The pH of the zinc ammonium chloride tank is approximately 4.*

46. Sulfuric acid, hydrofluoric acid and sodium hydroxide are highly corrosive, can burn skin upon contact and are "hazardous substances" pursuant to section 24-603(b) of HSERL.

47. Lead is toxic by ingestion and inhalation, can cause neurological disorders, including brain damage, and is a "hazardous substance" pursuant to section 24-603(b) of HSERL.

48. Chromium and arsenic are toxic and carcinogenic and are "hazardous substances" pursuant to section 24-603(b) of HSERL.

49. Because of defendants' failure to dispose of the drums properly and to construct adequate spill preventive devices for the process tanks, there is an imminent threat that these hazardous substances will spill or leak and be released into the environment, with disastrous consequences for public health, welfare and the environment.

50. The contaminated solids and sludges are stored in open, unprotected metal drums that are visibly deteriorating due to

the material's corrosivity and are haphazardly stacked in unstable piles, up to six drums high. Because of the increased danger of rupture in stacking more than two drums on top of each other, especially if the drums are corroding and open, there is an imminent danger of spillage.

51. The drums of acids, caustics and unidentified liquids, although sealed, are also stored in unstable piles, up to six drums high. The addition of a single drum to the pile could cause the whole structure to fall over and the drums to rupture.

52. The absence of adequate spill control measures, including diking around all five process tanks and a concrete pad beneath the ~~sulfuric acid~~ ^{H₂SO₄} tank, poses a serious threat of unconfined spillage and leakage.

53. Spilled chemicals are likely to leach into the surrounding soil and groundwater through the facility's exposed dirt floor, thus contaminating the environment in and around the facility.

54. Defendants' failure to discontinue use of the deteriorated tank of zinc ammonium chloride has already caused, and is continuing to allow, arsenic, lead, chromium, sulfuric acid and sodium hydroxide, which are released into that tank from the metals parts, to leach through the facility's exposed dirt floor, thus contaminating the surrounding soil and groundwater.

55. Defendants' failure to sample twenty-seven drums of unidentified liquids, and their consequent ignorance as to what procedure to use for storing and disposing of them, creates a further

hazard to the public and the environment in the event of spills or leaks.

56.. Each day defendants continue to operate their facility in violation of the Commissioner's Order creates a further threat of environmental contamination and increases the danger that an employee will unwittingly knock over one of the piles of drums, thus harming themselves and the public at large.

**FIRST CAUSE OF ACTION AGAINST
DEFENDANTS JOHN SWEENEY, NELSON
GALVANIZING, INC., AND NELSON
FOUNDRY, INC.**

57. Plaintiff repeats the allegations set forth in paragraphs 1 through 56.

58. The acts or omissions of defendants John Sweeney, Nelson Galvanizing, Inc., and Nelson Foundry, Inc. caused or substantially contributed to the release or substantial threat of release of hazardous substances into the environment at and around the Nelson Galvanizing facility.

59. Pursuant to sections 24-610(b) and 24-603(g)(2) of HSERL, defendants John Sweeney, Nelson Galvanizing, Inc. and Nelson Foundry, Inc. are "responsible persons" who failed to comply with the August 1988 Order within the time fixed for compliance, and against whom the City is entitled to obtain a court order directing their compliance with the August 1988 Order.

**SECOND CAUSE OF ACTION AGAINST
DEFENDANTS JOHN SWEENEY AND
NELSON GALVANIZING, INC.**

60. Plaintiff repeats the allegations set forth in paragraphs 1 through 59.

61. Defendants John Sweeney and Nelson Galvanizing, Inc. controlled or had the capacity to control the day-to-day operations of the Nelson Galvanizing facility and its employees at the time hazardous substances were released or posed a substantial threat of release from the facility into the environment, and both defendants were thus "operators" of the facility.

62. Pursuant to sections 24-610(b) and 24-603(g)(1) of HSERL, defendants John Sweeney and Nelson Galvanizing, Inc. are "responsible persons" against whom the City is entitled to obtain a court order directing their compliance with the August 1988 Order.

**THIRD CAUSE OF ACTION AGAINST
DEFENDANTS JOHN SWEENEY, NELSON
GALVANIZING, INC., AND NELSON
FOUNDRY, INC.**

63. Plaintiff repeats the allegations set forth in paragraphs 1 through 62.

64. Defendants John Sweeney, Nelson Galvanizing, Inc. and Nelson Foundry, Inc. owned or operated the facility at the time hazardous substances were disposed of on the site and caused, authorized or permitted such substances to be so disposed, where there was a release or substantial threat of release of such substances into the environment.

65. Pursuant to sections 24-610(b) and 24-603(g)(3) of HSERL, defendants John Sweeney, Nelson Galvanizing, Inc. and Nelson Foundry, Inc. are "responsible persons" against whom the City is entitled to obtain a court order directing their compliance with the August 1988 Order.

**FOURTH CAUSE OF ACTION AGAINST
NELSON FOUNDRY, INC.**

66. Plaintiff repeats the allegations set forth in paragraphs 1 through 65.

67. Defendant Nelson Foundry, Inc. was the owner of the Nelson Galvanizing facility at the time hazardous substances were disposed of thereon and caused, authorized or permitted such disposal, and there was a release or substantial threat of release of such hazardous substances into the environment.

68. Pursuant to sections 24-610(b) and 24-603(g)(3) of HSERL, defendant Nelson Foundry, Inc. is a "responsible person" against whom the City is entitled to obtain a court order directing its compliance with the August 1988 Order.

**FIFTH CAUSE OF ACTION AGAINST
DEFENDANT NELSON FOUNDRY, INC.**

69. Plaintiff repeats the allegations set forth in paragraphs 1 through 68.

70. Defendant Nelson Foundry, Inc. was the owner of the Nelson Galvanizing facility at the time of the release or substantial threat of release of hazardous substances into the environment.

71. Pursuant to sections 24-610(b) and 24-603(g)(1), defendant Nelson Foundry, Inc. is a "responsible person" against whom the City is entitled to obtain a court order directing compliance with the August 1988 Order.

**SIXTH CAUSE OF ACTION AGAINST
ALL DEFENDANTS**

72. Plaintiff repeats the allegations set forth in paragraphs 1 through 71.

73. Defendants are responsible persons who, without sufficient cause, willfully violated, or failed or refused to comply with the August 1988 Order issued pursuant to section 24-608 of HSERL.

74. Pursuant to section 24-610(c)(1) of HSERL, defendants are jointly and severally liable for a civil penalty of up to \$5,000 for each day they have and continue willfully to violate, fail or refuse to comply with the August 1988 Order.

**SEVENTH CAUSE OF ACTION AGAINST
ALL DEFENDANTS**

75. Plaintiff repeats the allegations set forth in paragraphs 1 through 74.

76. The presence and threat of release of hazardous substances at defendants' facility, as described in paragraphs 38 through 56 above, poses a continuing and substantial threat to the public health and environment, causes damage to the public in the exercise of rights common to all and menaces the property, health and safety of the people of the City of New York.

77. By failing to comply with the August 1988 Order, defendants have proximately caused the creation of the continuing public nuisance described in paragraphs 38 through 56.

78. Upon their receipt of the August 1988 Order and each of DEP's subsequent letters, defendants knew or should have known that their failure properly to comply with the Order was causing the creation of a public nuisance.

79. Defendants have nevertheless failed to take adequate remedial measures and are liable for the creation and maintenance of the continuing public nuisance posed by the presence and threat of release of hazardous substances at the Nelson Galvanizing facility.

WHEREFORE, plaintiff respectfully requests judgment against defendants as follows:

80. As to the First through Fifth Causes of Action, a mandatory injunction directing defendants, jointly and severally, to comply with the August 1988 Order;

81. As to the Sixth Cause of Action, the imposition of a civil penalty against defendants, jointly and severally, in the amount of \$5,000 for each day they have and continue willfully to violate, fail or refuse to comply with the August 1988 Order;

82. As to the Seventh Cause of Action, injunctive relief directing defendants, jointly and severally, to undertake and complete abatement of the public nuisance created by the presence and threatened release of hazardous substances at and in the vicinity of the facility; and

83. As to all Causes of Action, reasonable attorneys' fees, the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October __, 1990

VICTOR A. KOVNER
Corporation Counsel of the
City of New York
Attorney for Plaintiff
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New York, New York 10007
(212) 374-3191

By: _____
LYDIA SEGAL
Assistant Corporation Counsel
Affirmative Litigation Division

Sample #	Se	As	Ba	Cd	Cr	Hg	Pb	Se	Total Zn	pH
<i>Drum</i> 1 (S)	<0.5 ppm	0.46 ppm	372 ppm	6.1 ppm	207 ppm	1.0 ppm	14460 ppm	<0.1 ppm	10440 ppm	10.20
<i>Neutralization PIT</i> 2 (L)									173	2.84
<i>Process Pit</i> 3 (L)									8.0	4.32
<i>Trench</i> 4 (L)									365	12.13
<i>Trench</i> 5 (L)									344	>13
<i>WMA Soil</i> 6 (S) *	<0.5	0.16	<1	48	77	<0.1	760	<0.1	17780	2.30
<i>PV</i> 7 (L)									4575	>13
<i>Trench</i> 8 (L) NP									970	12.08
<i>Leak from Tank</i> 9 (L) *									20500	3.51
<i>PV Tank</i> 10 (L)									10690	<1
<i>Drummed</i> 11 (L)	<0.5	0.21	<1	5.2	131	0.4	197	<0.1	6520	2.20
<i>Drum (sludge)</i> 12 (S)	<0.5	0.20	<1	7.4	373	4.0	11420	<0.1	18700	1.30
<i>PV</i> 13 (L)									1724	3.78
<i>PV</i> 14 (L)									9488	<1
<i>Drummed</i> 15 (L)	<0.5	0.14	<1	5.6	24	<0.1	172	<0.1	163800	6.67
<i>Drum</i> 16 (S)	<0.5	0.29	115	6.4	84	1.3	13680	<0.1	7700	10.05
<i>By Soil</i> 17 (S) *	<0.5	<0.10	394	20	260	0.1	3032	<0.1	23100	5.69
<i>Overhead Pit</i> 18 (L)									800	7.37
19 (S)			<10	34	32		129		63.7	4.19
20 (S)			<10	2	40		30		32.6	3.91

NP concrete lined
Trench lined

NKLP Sampling 8/19/08